

Judge Robb, cont.

Foundation and a Senior Distinguished Fellow of the Indianapolis Bar Foundation. She is a frequent speaker on legal topics for attorneys, other judges, and professional, civic and community organizations.

Judge Robb was Founding Chair of Governor Bowen's Commission on the Status of Women; was a recipient of a 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University to honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award; the 2007 Warren G. Harding High School, Warren, Ohio, Distinguished Alumni Award; the 2010 Indiana University Alumni Association President's Award, a 2010 Indiana Lawyer Distinguished Barrister Award, the 2011 Indianapolis Bar Association Women and the Law Committee's Antoinette Dakin Leach Award and the 2011 David Hamacher Award from the Appellate Practice Section of the Indiana State Bar Association.

Judge Robb chairs the Supreme Court Task Force on Family Courts and is involved in several projects to benefit the Indiana legal system. She also chaired the Supreme Court task force for the development of Trial Court Local Rules, has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest on Lawyer Trust Account) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and the Federal Advisory Committee for the Expediting of Federal Litigation.

Judge Robb authored "Reflections of Baseball, Life and the Law" in the Indiana State Bar Association's journal, *Res Gestae* and "Running Bases, Winning Cases: Why the Grand Old Game of Baseball is like the legal

profession" in the ABA's journal. She also authored a chapter on Supreme Court Justice Leonard Hackney in, *Indiana Supreme Court Justices*, and co-authored a chapter, "From Juvenile Courts to Family Courts," in *Essays on Indiana Legal History*.

In addition, she serves on the ABA Committee that accredits law schools and Chaired the 2010 ABA's Appellate Judges Council - Appellate Judges Education Institute's national Summit for Judges, lawyers and Staff attorneys. Chief Judge Robb is an elected member of the American Law Institute (ALI).

Judge Robb was retained on the Court of Appeals in 2000 and 2010, is married to a professor at Purdue University. Their son, a graduate of the United States Naval Academy, is a Lieutenant on active duty in the United States Navy.

Judge Riley, cont.

al legal experience. In 2008, she co-founded the Legal Aid Centre of Eldoret, Kenya (LACE), which provides legal access to justice in the AMPATH medical center for its HIV/AIDS patients.

In 2011, Judge Riley traveled with the Washington, D.C.-based International Judicial Academy to The Hague, Netherlands, to observe the International Criminal Court and two International Criminal Tribunals that are hearing cases from Sierra Leone and the former Yugoslavia.

In 2012 she participated in the 3rd Sino-U.S. Law Conference, which was held in Beijing at the National Judges College of the People's Republic of China, which oversees all aspects of that country's judicial training, placement and promotion.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006.

Judge Bradford, cont.

duction of juvenile pretrial incarceration in Marion County that is now a statewide model.

Before joining the bench, he was recruited by Marion County Prosecutor Scott Newman as Chief Trial Deputy, in which capacity he managed a staff of more than 100 attorneys for two years. He also served five years as an Assistant United States Attor-

ney for the Southern District of Indiana, where he prosecuted major felony drug cases under United States Attorney Deborah J. Daniels. He was in private legal practice from 1986 to 1991.

A native Hoosier, Judge Bradford earned a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University School of Law-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and he is a former member of both the Indiana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference.

Judge Bradford is a Distinguished Senior Fellow of the Indianapolis Bar Association and a member of the Marion County Bar Association, Kosciusko County Bar Association, Indiana State Bar Association, American Bar Association, and the Sagamore Inn of Courts. He has taught Indiana Continuing Legal Education Foundation trial practice seminars for more than 10 years and also teaches Forensic Science and the Law at Indiana University-Purdue University Indianapolis, where he is an adjunct instructor.

Judge Bradford is well versed in contemporary technology and media issues, having served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and case management. He frequently lectures on a wide range of legal topics and in 2012 will serve as a Vice President of the Indianapolis Bar Association and on the Indiana State Bar Association Appellate Practice Section Executive Committee.

Judge Bradford is a former director of the John P. Craine House in Indianapolis, a residential alternative to incarceration for women offenders with preschool-aged children. He is a former advisory board member of the Lawrence Youth Football League and has long been active at Castleton United Methodist Church.

He and his wife, Sam, a full-day kindergarten teacher, have five adult children.

COURT OF APPEALS OF INDIANA

ORAL ARGUMENT AT A GLANCE

INDIANA STATE UNIVERSITY

Corn v. State of Indiana

CRIMINAL LAW ISSUES:

- Did the State improperly impeach the Appellant at trial for exercising his right to remain silent during police questioning?
- Did the State meet its burden of proof that Appellant did not act in self-defense?

ORAL ARGUMENT:

Thursday, March 27, 2014
11 a.m.

APPEAL FROM:

Vigo Superior Court
The Honorable
John T. Roach, Judge

Synopsis: *Case No. 84A01-1304-CR-161*

Charles Corn lived on Donald Clark's property in Terre Haute, where Clark permitted Corn to pitch a tent against the backside of Clark's house and use the kitchen, utensils, and bathroom in the house as needed. Corn connected a jump wire to route electricity from the pole to his tent for his own use.

Clark, who has cerebral palsy and is confined to a wheelchair, asked his friend James Brown to speak with Corn about removing the wire. On the afternoon of Sept. 8, 2012, Brown confronted Corn about removing the wire, and Corn became angry. He yelled at Brown for getting involved, and the altercation soon became physical. Brown is much larger than Corn, and Corn was unable to do much but try to protect

himself during the fight.

After the two were separated, Corn began retreating to his tent but continued to yell profanities at Brown. Brown then knocked Corn to the ground and kicked him at least one or two times.

About four hours later, Clark was sitting in a parked van (where he would often sit because the seats were comfortable) and Corn approached him to ask why Clark hadn't come to Corn's aid during the afternoon fight.

Corn then saw that Brown was seated in the passenger's seat and asked Brown to step out of the van so the two men could talk. Brown quickly exited the van and went around to where Corn was standing. Corn then stabbed Brown once in the abdomen with a kitchen knife.

Brown went back to the side of the van to grab a gun but switched to a sledge hammer when he realized the gun did not have ammunition. Brown swung the sledge hammer a few times, but none of the swings hit Corn.

Brown dropped the sledge hammer and had to be physically supported by a friend to walk to his sister's house across the alley to wait for police and paramedics to arrive.

The State charged Corn with class B aggravated battery, and Corn was tried by jury. Corn was found guilty as charged.

On appeal, Corn first argues that Corn's right to due process under the Fourteenth Amendment was violated at trial 1) when Detective Long commented on Corn's right to remain

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Synopsis, cont.

silent; 2) when Corn’s counsel asked a question on cross-examination relating to Corn’s right to remain silent; and 3) because the prosecutor’s comment on Corn’s theory of the case was improper.

Taken together, Corn argues these statements amounted to a violation of the rule set forth in *Doyle v. Ohio* that prohibits using a defendant’s exercise of his right to remain silent against him for impeachment purposes.

Corn did not object to these statements at trial, so he argues that the errors were fundamental and amounted to such a blatant violation

of basic principles of due process as to render the entire trial unfair.

The State argues that these statements do not constitute a *Doyle* violation because the comments on Corn’s silence were not used for impeachment purposes.

Additionally, the State argues that the comments elicited from Corn’s counsel on cross-examination were invited error and therefore are not entitled to relief on appeal.

Corn’s second argument is one of sufficiency of the evidence. He argues that the State did not meet its burden to prove beyond a reasonable doubt that Corn was not acting in self-defense when he stabbed Brown.

Attorneys for the Parties

For the Appellant

Mark Small is from West Middleton, IN. He resides and has his law office in Broad Ripple. He received a BA in Political Science from DePauw University in 1978. He was on staff, during the day, at Northwestern University School of Law 1982-85. He graduated from Indiana University School of Law-Indianapolis in 1989 where he was a member and coach of the ABA Moot Court national team. His practice has a primary focus on appeals, post-conviction actions and questions of constitutional law. He is admitted to practice before the State and federal courts in Indiana; the U.S. Court of Appeals for the Seventh, Ninth, and District of Columbia Judicial Circuits; and the U.S. Supreme Court. He is death penalty-certified. He has had three novels published, performed stand-up comedy during the evenings in Chicago 1982-85, and hosts a weekly podcast, "Civil Discourse Now."

For the Appellee

Karl Scharnberg is from Indianapolis. He graduated from Marian College in 2003 with a bachelor’s degree in business administration. He obtained his J.D. from Ave Maria School of Law in Ann Arbor, Michigan in 2007. Mr. Scharnberg was admitted to the Indiana bar the following October and was employed by the Indiana Attorney General’s office as a deputy shortly thereafter. Mr. Scharnberg is a member of the Criminal Appeals Section of the Attorney General’s appellate division. He represents the State of Indiana in non-capital criminal appeals and post-conviction proceedings. He has argued more than 10 times before the Court of Appeals.

What happens after oral argument?

After oral argument, a designated “writing judge” drafts an opinion for the others to consider. Generally, opinions affirm or reverse lower court rulings in whole. But some affirm in part, reverse in part, or both. Not infrequently, the opinion instructs the trial court about next appropriate steps. Many opinions are unanimous, although non-unanimous opinions (2-1) are not uncommon. Judges sometimes write separate concurring or dissenting opinions that emphasize different points of law or facts than the main opinion. Once issued, all opinions are published on the court’s website and are permanently maintained by the Clerk of Appellate Courts. Parties can appeal Court of Appeals decisions to the Indiana Supreme Court by filing a petition to transfer. But transfer is not automatic; the Supreme Court can grant or deny transfer with or without giving a reason. If the petition is denied, the Appeals Court decision stands.

Court of Appeals tidbits

- Six of the court’s first 19 judges served in the Civil War, all as Union soldiers or officers. Judge Posey Kime, born 1896, was the first to serve in WW1.
- Nine Court of Appeals judges have later served the Indiana Supreme Court, including current Justice Robert D. Rucker.
- Judge Frank M. Powers served just 33 days. The longest serving judge by far is Patrick D. Sullivan Jr., at more than 16,000 days. He retired in 2007 but still serves as a senior judge.
- One of the five original members of the court, Jeptha New, died from a self-inflicted pistol shot in 1892. His term of office was completed by his son, Willard New.
- Another father-son pair also served on the court: Ralph N. Smith and son Russell W. Smith. An uncle-nephew pair also served: Edgar D. Crumpacker and nephew Harry L. Crumpacker.
- Memorably named judges include Henry Clay Fox, Daniel Webster Comstock, Cassius Clay Hadley and Ira Batman.
- Judge John C. McNutt’s son, Paul McNutt, was Indiana governor from 1933-37 and appointed two judges to the Court of Appeals.
- One foreign-born judge attained the court: George L. Reinhard was born in Bavaria in 1843, served in the Civil War and wrote “The Common Sense Lawyer.”
- Judge Thomas Faulconer made Indiana history when, as a Marion County judge, he opened his courtroom doors to TV and newspaper cameras for a celebrated murder trial in 1959.
- Judge Joseph H. Shea resigned his Appeals Court seat in 1916 to become President Woodrow Wilson’s ambassador to Chile.

Today’s Panel of Judges

*The Honorable
Margret G. Robb
(Tippecanoe County)*

Margret G. Robb was appointed to the Court of Appeals of Indiana in July 1998 by Governor Frank O’Ban-non. She holds a B.S. and an M.S. in Business Economics from Purdue University, a Magna Cum Laude J.D. from Indiana University Robert H. McKinney School of Law and is a graduate of the Graduate Program for Indiana Judges. In 2011 she began a three year term as **Chief Judge**; the first woman to hold that position in the Court’s more than 100 year history. Prior to her appointment to the Court, Judge Robb was, for 20 years, engaged in the general practice of law in Lafayette, and served as a Chapter 11, 12 and a standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana. She was a registered family and civil mediator and served as a Tippecanoe County Deputy Public Defender. She has been an officer of the Indiana State Bar Association, the Fellows of the Indiana State Bar Foundation, Tippecanoe County Bar Association, National Association of Women Judges, the Indiana University School of Law- Indianapolis Alumni Association and the Bankruptcy Section of the Indiana State Bar Association. She has also been a Board member of the Appellate Judges Council of the American Bar Association, the Indianapolis Bar Association, the Indianapolis Bar Foundation, the Senior Council Section of the Indianapolis Bar Association, the Appellate Practice Section of the Indiana State Bar Association and the Appellate Judges Education Institute. She was the moderator for the 2005-2006 and Chair for the 2006-2007 Indianapolis Bar Association’s Bar Leader Series, and is a member of the American Bar Foundation, American Judicature Society, a Master Fellow of the Indiana State Bar

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*The Honorable
Patricia A. Riley
(Jasper County)*

Patricia A. Riley was named to the Court of Appeals of Indiana by Governor Evan Bayh in January of 1994. A native of Rensselaer, Indiana, Judge Riley earned her bachelor’s degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974. Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993. She is a former associate professor at St. Joseph's College in Rensselaer and currently an adjunct professor at the Indiana University School of Law -Indianapolis. Judge Riley’s legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA’s Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System. Judge Riley is the former chair of the Appellate Practice Section of the American Bar Association, and a member of the ABA’s Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges. Judge Riley’s civic associations include being on the Board of Directors of the Greater Indianapolis Health Foundation, Board of Directors of Global Peace Initiatives, Board of Directors and Treasurer of the Indiana University School of Law – Indianapolis Alumni Association, and a member of the Indianapolis Rotary Club. She also has extensive internation-

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*The Honorable
Cale J. Bradford
(Marion County)*

Cale J. Bradford has broad experience in both the state and federal legal systems, including service as a Marion County deputy prosecutor, a public defender, a federal prosecutor, a trial court judge and an appellate court judge. In addition, he has six years’ experience in private legal practice. He was appointed to the Court of Appeals of Indiana by Gov. Mitch Daniels and took his seat on Aug. 1, 2007. In that time, he has participated in more than 2,000 appellate decisions and more than 80 oral arguments. He has written more than 700 majority decisions, including 145 published opinions. Judge Bradford also led a successful effort to encourage the mediation of legal disputes pending before the Court of Appeals, and greatly contributed to creation of the Judicial Retention website that helps voters make informed decisions about Appellate Judges standing for retention election. Before joining the Appeals Court, he served the people of Marion County for more than 10 years as Judge of the Marion Superior Court, including seven years in the criminal division and three in the civil division. Twice, his colleagues elected him as presiding judge of the Court. During that tenure, Judge Bradford led two major initiatives that addressed critical criminal justice issues facing Marion County. He chaired the Marion County Criminal Justice Planning Council, which recommended improved responses to jail overcrowding, staffing and budgets. Those efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county’s Juvenile Detention Center. He also led implementation of the Annie E. Casey Foundation Juvenile Detention Alternative Initiative, which resulted in a comprehensive yet responsible re-

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